

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GRENVILLE DIVISION

WARDETTE PRICE (# 116588)

PLAINTIFF

v.

No. 4:06CV191-P-B

VERLENA FLAGG, ET AL.

DEFENDANTS

ORDER OF DISMISSAL

The court, *sua sponte*, takes up the dismissal of the plaintiff's case filed under 42 U.S.C. § 1983. The plaintiff, a prisoner proceeding *pro se*, seeks review of his sentence imposed under the laws of Mississippi. The plaintiff does not challenge the conditions of his confinement as required under 42 U.S.C. § 1983; he instead challenges the fact and duration of his confinement, a claim which he should have brought as a *habeas corpus* claim under 28 U.S.C. § 2254. The plaintiff alleges that he has not been "sentenced to do any time within M.D.O.C." The Mississippi Department of Corrections web site, however, reflects that the plaintiff was sentenced to a term of five years incarceration for felony domestic violence.

A claim under 42 U.S.C. § 1983 does not accrue until the conviction or sentence has been invalidated. *Heck v. Humphrey*, 512 U.S. 477, 489-90 (1994). As the plaintiff has not shown that his conviction or sentence has been reversed, expunged, invalidated or impugned by the grant of a writ of *habeas corpus*, his claim under 42 U.S.C. § 1983 is not ripe for consideration and is hereby **DISMISSED** without prejudice to his ability to file a *habeas corpus* claim under 28 U.S.C. § 2254.

SO ORDERED, this the 14th day of March, 2007.

/s/ W. Allen Pepper, Jr.

W. ALLEN PEPPER, JR.

UNITED STATES DISTRICT JUDGE